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Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 25a0069p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

FATHIREE UDDIN ALI,

Plaintiff-Appellant,

v.

STEPHEN E. ADAMSON, Chaplain; DAVID M. LEACH, Special Activities Coordinator; SHANE JACKSON, Warden; MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendants-Appellees.

No. 24-1540

Appeal from the United States District Court
for the Western District of Michigan at Grand Rapids.
No. 1:21-cv-00071—Hala Y. Jarbou, District Judge.

Argued: March 19, 2025

Decided and Filed: March 28, 2025

Before: SUTTON, Chief Judge; GRIFFIN and MATHIS, Circuit Judges.

COUNSEL

ARGUED: D Dangaran, RIGHTS BEHIND BARS, Washington, D.C., for Appellant. Christopher Alex, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellees. **ON BRIEF:** Samuel Weiss, RIGHTS BEHIND BARS, Washington, D.C., for Appellant. Christopher Alex, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellees.

OPINION

SUTTON, Chief Judge. Fathiree Ali, a Muslim inmate, asked the Michigan Department of Corrections to serve him only halal food, a special diet required by his religion. After the

prison chaplain directed him to apply for the prison's vegan meal option, another official rejected his application upon learning that he had purchased over one hundred non-halal items from the prison commissary. The district court dismissed Ali's claim against the Department of Corrections and granted summary judgment to the officers. We dismiss Ali's appeal in part for lack of jurisdiction and affirm the rest of the district court's decision.

I.

Eating and fasting are central to many faith groups. Michigan prisons seek to accommodate a wide range of inmates whose beliefs require distinct diets. They offer three options: a regular menu, a vegetarian menu, and a vegan menu. The vegan menu complies with most kosher and halal dietary restrictions.

Not everyone is eligible for the vegan meal plan. To qualify, a prisoner must make a written request to the prison warden, who refers the request to the prison's special activities coordinator for approval. If the vegan meal "does not meet" an inmate's "religious dietary needs," the Department permits the inmate to request an alternative menu, subject to the "approval of the Deputy Director" of the Department of Corrections. R.33-3 at 7. The Department may rescind its approval if the inmate repeatedly eats food inconsistent with his professed faith.

Fathiree Ali is a Muslim inmate who used to be confined in Michigan's Carson City Correctional Facility. His faith contains two dietary restrictions. He must "consume a [halal] diet," which "must include meat," "dairy, chicken, eggs, honey, fish, cheese, lamb," and animal "fats." R.53-2 at 3. To "exclude any" is haram, "a major sin and act of disbelief." R.53-2 at 3. In addition, Ali must avoid certain foods, like pork, and meats slaughtered in a manner inconsistent with Islamic law.

Because the Carson City prison provided only haram meat entrées, Ali asked chaplain Steve Adamson for a "[halal] diet." R.53-2 at 3. Adamson indicated that he needed approval for a vegan diet first. He added that the Department "has not ever approved a meat diet for Muslim prisoners." R.53-2 at 5. Ali left the meeting with the impression that he needed approval for the vegan diet before he could request an alternative menu with halal meat.

Ali requested the vegan diet in 2017. After an interview, Adamson recommended the prison approve his request because he found Ali "sincere in the practice of his faith." R.33-7 at 2. But David Leach, then the activities coordinator, did not. He noticed that, even though the prison commissary offered two halal meat items, Ali had purchased three sausages and over a hundred meat-flavored ramen noodles—all haram—in the three months before his application. Leach denied the request.

Ali sued Adamson, Leach, warden Shane Jackson, and the Michigan Department of Corrections under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Free Exercise Clause, and 42 U.S.C. § 1983. The district court dismissed Ali's claims against the Department of Corrections and granted summary judgment in favor of the officials.

II.

Before reaching the merits of Ali's appeal, we must pause, indeed stop, to assure ourselves of jurisdiction over his claims. Article III extends the "judicial Power" only to "Cases" and "Controversies." U.S. Const. art. III, § 2. That "irreducible constitutional minimum" demands an injury in fact, traceable to the defendant's actions, and redressable by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Redressability, the relevant lens in this case, asks if it is "likely, as opposed to merely speculative," that a favorable decision would rectify Ali's injury. *See id.* at 561 (quotation omitted). Because these constitutional requirements persist from a lawsuit's cradle to its grave, we must dismiss an appeal as moot once the federal courts can no longer grant effectual relief. *Brown v. Yost*, 122 F.4th 597, 601 (6th Cir. 2024) (en banc) (per curiam).

Ali's claims against the chaplain (Adamson) and the warden (Jackson) for injunctive relief will not redress his injury. Only the special activities coordinator may approve requests for vegan meals. And only a "Deputy Director" may approve requests for alternative menus, such as those containing halal meat. R.33-3 at 7. Adamson and Jackson have no power to do either.

Even if the chaplain and warden could help Ali by referring his application for the vegan meal plan to the special activities coordinator, Ali's claims are moot anyway. Both of them worked at the Carson City Correctional Facility. Ali now resides at the Thumb Correctional

Facility. He has not produced any evidence that the chaplain and warden at his old prison can obtain this requested meal plan at his new prison.

Ali's § 1983 claim against Leach for injunctive relief under the Free Exercise Clause suffers from a different mootness problem. Unlike Adamson and Jackson, Leach (the special activities coordinator) works for the Department of Corrections, not one prison. Ali may sue Leach only in his individual capacity because "officials acting in their official capacities are" not "persons" under § 1983. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). And Leach, the individual, has left the job. He no longer works for the Department. An injunction against him would "amount to no more than a declaration" of the law. *California v. Texas*, 593 U.S. 659, 673 (2021). This claim, too, is moot.

That leaves four sets of merits claims. We consider each in turn.

III.

Does RLUIPA authorize a money-damages claim against Leach, Adamson, and Jackson? No. RLUIPA does not authorize damages against officials sued in their official capacity, *Sossamon v. Texas*, 563 U.S. 277, 293 (2011), or their individual capacity, *Haight v. Thompson*, 763 F.3d 554, 568 (6th Cir. 2014).

Congress must speak unambiguously when it "legislates through the spending power." *Id.* That clear-statement requirement reflects the breadth of Congress's spending power. The federal government possesses "only the powers granted to it" as enumerated in the Constitution. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 405 (1819). The States retain the remainder. But Congress may "regulate where it otherwise could not"—beyond its enumerated powers, in other words—by imposing conditions on federal funds afforded to state governments if "States consent to the bargain." *Haight*, 763 F.3d at 569. To make a fair offer and receive a knowing acceptance, Congress must set its conditions "unambiguously." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). A clear-statement imperative ensures that the States "exercise their choice knowingly, cognizant of the consequences of their participation." *Id.*

That principle informs the scope of RLUIPA's conditions on state prisons receiving "Federal financial assistance." *See* 42 U.S.C. § 2000cc-1(b)(1). If a government imposes "a substantial burden" on "religious exercise" in such a prison, inmates may seek "appropriate relief" against the culpable entity or officer. *Id.* §§ 2000cc-1(a), 2000cc-2(a). Because "the word 'appropriate' is inherently context dependent," the term "'[a]ppropriate relief' is open-ended and ambiguous about what types of relief it includes." *Sossamon*, 563 U.S. at 286; *cf. Pennhurst*, 451 U.S. at 13, 22, 24–26 (holding that a spending condition giving developmentally disabled people "a right to appropriate treatment" was too "indeterminate" to compel states to fund treatment facilities). That open-textured term "plausibly covers just injunctive, declaratory, and other non-monetary relief" and does not unambiguously notify Michigan that taking federal funds would open its employees to private damages suits. *Haight*, 763 F.3d at 568.

Unable to dodge our on-point caselaw, Ali faces it head on. He suggests that the Supreme Court abrogated *Haight* and demands that we overrule it. The Court did not, and we may not.

In 2020, the Court held in *Tanzin v. Tanvir* that plaintiffs seeking "appropriate relief" under a different statute, the Religious Freedom Restoration Act (RFRA), may seek damages against *federal* officials sued in their individual capacity. 592 U.S. 43, 48–49 (2020). It observed, as the *Sossamon* Court did, that "appropriate relief" is "open-ended on its face," making its contours "inherently context dependent." *Id.* at 49 (quotation omitted). Noting that courts historically awarded damages at common law against officials in many settings, the Court concluded that RFRA's "appropriate relief" encompassed damages. *Id.* In doing so, it did not impose a clear-statement requirement.

Ali points out that RLUIPA also entitles a plaintiff to "appropriate relief against a government," 42 U.S.C. § 2000cc-2(a), suggesting that the two laws permit similar damages actions. But this argument asks too much of *Tanzin*. While Congress enacted RFRA under its Fourteenth Amendment enforcement power, *City of Boerne v. Flores*, 521 U.S. 507, 529–36 (1997), it enacted RLUIPA under its spending power, *Haight*, 763 F.3d at 559. "[T]he same words, placed in different contexts, sometimes mean different things." *Yates v. United States*, 574 U.S. 528, 537 (2015) (plurality op.). Just so here. While RLUIPA and RFRA share

similarly restrictive ends-means tests of state action, only the former—as a spending condition—must clearly state its terms and conditions. That indeed explains why the Court would invalidate RFRA as applied to the States when it turned on its enforcement power under the Fourteenth Amendment, *see City of Boerne*, 521 U.S. at 533–36, but has never invalidated RLUIPA as applied to the States. RFRA exceeded Congress's enforcement power under the Fourteenth Amendment. But the spending power allows Congress to exceed its enumerated powers, as it did in RLUIPA, by giving the States the choice to accept the regulation in return for federal money. So long as the congressional offer is clearly stated—including as to money damages—the States may permit this extra-constitutional regulation. Casually grafting *Tanzin*'s RFRA holding as to federal officials onto RLUIPA and its application to state officials would violate, not vindicate, the "inherently context dependent" nature of "appropriate relief." *Tanzin*, 592 U.S. at 49 (quotation omitted).

When two statutes have distinct constitutional sources, they may, sometimes they must, have distinct meanings. Take *District of Columbia v. Carter*, in which the Supreme Court held that the District of Columbia did not count as a "State or Territory" under 42 U.S.C. § 1983. 409 U.S. 418, 420–21 (1973). The plaintiff invoked precedent that the District of Columbia fell within "every State and Territory" as required by 42 U.S.C. § 1982. *Id.* But while Congress enacted § 1982 under its Thirteenth Amendment powers, the Court explained, it enacted § 1983 under its Fourteenth Amendment powers. *Id.* at 421–24. The former enabled Congress to enforce the abolition of slavery "within the United States, or any place subject to their jurisdiction." U.S. Const. amend. XIII. But "the commands of the Fourteenth Amendment are addressed only to the State." *Carter*, 409 U.S. at 423. Therefore, the Court reasoned, the District of Columbia was not a "State" within the meaning of the Fourteenth Amendment, and the District's officers fell outside § 1983's scope, *id.* at 424–25—at least until Congress later amended § 1983, Act of Dec. 29, 1979, Pub. L. No. 96-170, 93 Stat. 1284.

This case is hewed from the same mold. Ali relies on precedent holding that "appropriate relief" under RFRA encompasses individual-capacity damages actions to insist that "appropriate relief" under RLUIPA does too. But after *City of Boerne*, RFRA does not apply to state officials. 521 U.S. at 532–36. By contrast, its constitutional application to "the internal operations of the

national government"—and to federal officials—"rests securely on" Congress's power to "determine how the national government will conduct its own affairs." *O'Bryan v. Bureau of Prisons*, 349 F.3d 399, 401 (7th Cir. 2003). RLUIPA extends to state officials due only to Congress's spending power to "implement federal policy it could not impose directly under its enumerated powers" by offering the States money to comply with this extra-constitutional regulation. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 578 (2012).

That makes all the difference. One source of congressional authority, the spending power, requires careful scrutiny and a clear statement to ensure that state officials made "a legitimate choice whether to accept" otherwise unconstitutional regulations "in exchange for federal funds." *Id.* The other source of congressional authority does not. When Congress simply limits the authority of federal prison officials to burden the free exercise of religion, it does not need a special source of power. *See O'Bryan*, 349 F.3d at 401; *City of Boerne*, 521 U.S. at 536. No clarity imperative thus applies. Neither Ali nor any court we know of has identified a "historically or constitutionally grounded norm[]" against individual-capacity damages lawsuits such that courts would require a clear statement from Congress to unsettle it. *Jones v. Hendrix*, 599 U.S. 465, 492 (2023). *Tanzin*, which involved an individual-capacity claim for money damages against federal prison officials under RFRA, required no such clear statement either. *See* 592 U.S. at 490–93. That silence is telling because the Supreme Court typically tells us when Congress must speak with unmistakable clarity. *See, e.g.*, *United States v. Miller*, No. 23-824, --- U.S. ---, 2025 WL 906502, at *8 (2025); *Fin. Oversight & Mgmt. Bd. for P.R. v. Centro De Periodismo Investigativo, Inc.*, 598 U.S. 339, 342 (2023). Because RLUIPA's remedies demand clarity and RFRA's do not, "appropriate relief" warrants a narrower definition under RLUIPA.

This conclusion also respects *Tanzin*. Recall that it reasoned that the ordinary meaning of "appropriate relief" required "inherently context dependent" determinations of what remedies were "specially fitted or suitable." *Tanzin*, 592 U.S. at 48–49 (quotation omitted). In "light of RFRA's origins," the Court found "damages under § 1983" "particularly salient" in circumscribing "appropriate relief." *Id.* at 50. But in light of RLUIPA's origins under the spending power, a different set of expectations and requirements applies. In the same way that

asking your own child to do the dishes sheds little light on the propriety of asking other children to do your dishes, Congress's inherent prerogative to regulate federal officials does not mean it may regulate state officials.

Our sister circuits agree—both before and after *Tanzin*. Since *Tanzin*, the Second, Fifth, and Ninth Circuits reaffirmed that RLUIPA does not permit individual-capacity damages suits against state officials. *See, e.g.*, *Landor v. La. Dep't of Corr. & Pub. Safety*, 82 F.4th 337, 341–44 (5th Cir. 2023), *petition for cert. filed*, No. 23-1197 (May 3, 2024); *Tripathy v. McKoy*, 103 F.4th 106, 114 (2d Cir. 2024), *petition for cert. filed*, No. 24-229 (Aug. 27, 2024); *Fuqua v. Raak*, 120 F.4th 1346, 1359–60 (9th Cir. 2024). They reasoned, as we do, that RLUIPA's spending power underpinnings convey a narrower scope to "appropriate relief" that excludes damages, given Congress's failure to say otherwise unambiguously. *Landor*, 82 F.4th at 341; *Tripathy*, 103 F.4th at 114; *Fuqua*, 120 F.4th at 1360. Before *Tanzin*, the Third Circuit, like our circuit in *Haight*, distinguished RLUIPA's spending-power roots from RFRA's Fourteenth-Amendment ones. *See Mack v. Warden Loretto FCI*, 839 F.3d 286, 303–04 (3d Cir. 2016).

The Court's spending-power conditions, contrary to Ali's argument, demand clarity regardless of whether state or individual pocketbooks are on the line. They apply when the federal government conditions highway funds on adopting national minimum-drinking ages, *South Dakota v. Dole*, 483 U.S. 203, 205–07 (1987), or conditions child-education funds on accepting fee-shifting in later Individuals with Disabilities Education Act suits by families against state school districts, *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 295–96 (2006).

Ali points out that RLUIPA permits the federal government to seek only "injunctive or declaratory relief" when it sues a State, 42 U.S.C. § 2000cc-2(f), but used the broader term "appropriate relief" for individual-capacity lawsuits against government officials, *id.* § 2000cc-2(a). That shows, he claims, that Congress knew how to narrow the range of such lawsuits and chose not to do so here. But that inference is just that, a mere inference. It does not signal "clearly," "expressly," "unequivocally," and "unambiguously" that Congress imposed money-damages remedies in using the term "appropriate relief." *Sossamon*, 563 U.S. at 285, 290; *see Haight*, 763 F.3d at 568.

IV.

Does Ali have a cognizable claim for injunctive or declaratory relief against just Leach under RLUIPA? (Recall, by the way, that Adamson and Jackson no longer have power to adjust Ali's meal plan because he has moved to a different prison.) No as well.

RLUIPA bars States from imposing a "substantial burden on the religious exercise of a person residing in or confined to an institution" unless it is the "least restrictive means" of furthering a "compelling governmental interest." 42 U.S.C. § 2000cc-1(a). To obtain relief, an inmate must show that he has a "sincerely held religious belief" and that the government "substantially burdened [his] exercise of religion." *Holt v. Hobbs*, 574 U.S. 352, 361 (2015). Only then may the prisoner insist that the State satisfy a "daunting compelling-interest and least-restrictive-means test." *Cavin v. Mich. Dep't of Corr.*, 927 F.3d 455, 458 (6th Cir. 2019). A substantial burden exists if the government "effectively forc[es prisoners] to choose between engaging in conduct that violates sincerely held religious beliefs and facing a serious consequence." *New Doe Child #1 v. Cong. of U.S.*, 891 F.3d 578, 589 (6th Cir. 2018).

Ali seems to seek relief from two features of Michigan prisons. He believes that they serve non-haram food cross-contaminated by haram meat. And he requests that the prison affirmatively serve him halal meat.

As to the first complaint, Ali can already obtain relief by signing up for the vegan meal plan. The vegan meals comply with "[h]alal religious tenets" and thus provide adequate nutrition without cross-contamination from haram meat. R.33-3 at 7. Better still, Ali can re-apply for the vegan diet today. Under Department policy, a prisoner "whose request" for a vegan meal "is denied" may apply again the next year. R.33-3 at 7. Because the record suggests that the prison last denied Ali's meal request in 2017, he could have re-applied any time after 2018. And his new request would go to a new special activities coordinator with a more recent record of his commissary purchases. Even if those purchases contained haram items, his new application could explain why. That Ali has not re-applied for a vegan meal in seven years—despite this ready alternative to eating cross-contaminated food—undermines his request for relief from this court.

The second complaint fares no better because Ali has two alternatives to access halal meat. *First*, he may apply today for an alternative meal plan if the vegan menu is inadequate. The Department's policy accommodates him, as it provides that a prisoner who finds the vegan menu inadequate to meet his dietary needs may request an alternative menu. *Second*, Ali may supplement his diet by purchasing halal sausages from the prison commissary, as he routinely did in 2017. Keep in mind, moreover, that Ali's claim is against Leach. The special activities coordinator's *denial* of the vegan diet eight years ago has no effect on Ali's affirmative need to consume halal meat. In this case, as with the others, appropriate relief comes from Michigan prisons and not federal courts.

Ali maintains that Leach's rejection of his request, combined with Adamson's statement of prison policy, made it impossible for him to consume a diet without haram foods and with halal meat. That's not true. Ali could make a new request for a vegan meal—now with a new chaplain, in a new prison, with a new special activities coordinator.

Ali also contends that his prison salary does not cover the halal meats in the commissary. But the undisputed record says that he can afford them. Ali spent roughly ninety dollars each month on various food items in the commissary. The presence of alternative sources of halal meats undercuts his charge of coercive pressure by Michigan prisons.

All of this helps to explain why *Haight v. Thompson* does not help him. 763 F.3d 554 (6th Cir. 2014). It held that "barring access" to certain foods constituted a substantial burden for inmates celebrating an annual powwow as part of the Native American Church. *Id.* at 564–65. No such bar exists here because Ali may re-apply today for a vegan menu or supplement his diet today with food from the commissary.

V.

Has Ali pleaded a cognizable RLUIPA claim against the Michigan Department of Corrections? No. While Ali may sue the Department under RLUIPA for declaratory and injunctive relief, *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 326–27 (5th Cir. 2009), *aff'd*, 563 U.S. 277 (2011); *Haight*, 763 F.3d at 568, his complaint fails to state a claim for relief against the agency because he does not identify a policy that violates RLUIPA.

Ali must show that a "governmental entity," 42 U.S.C. § 2000cc-5(4)(A)(i), imposed "a substantial burden on" his religious exercise, *id.* § 2000cc-1(a). But he has not identified any Department policy that does so. In truth, the Department's policies accommodate him. They permit prisoners to request a vegan menu that complies with "[h]alal religious tenets" and so does not contain haram meat or cross-contaminated food. R.33-3 at 7. If a prison does not offer vegan meals, they permit prisoners with religious dietary restrictions to transfer to one that does. And they allow prisoners to propose an alternative menu for the Deputy Director's approval if the vegan menu "does not meet his/her religious dietary needs." R.33-3 at 7.

Ali's only theory of harm attacks the "refusal to approve" his "request for a [halal] diet." R.1 at 6. But the Department of Corrections did not refuse that request. Leach did. Because Ali does not challenge the Department's policies themselves, he fails to show that it imposed a "substantial burden" on his religious exercise.

VI.

Does Ali have a cognizable money-damages claim against Adamson and Leach under the Free Exercise Clause and § 1983? No.

Qualified immunity protects officials from damages liability if their conduct "does not violate clearly established . . . constitutional rights." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). That command contains two conjunctive requirements: (1) that the officers violated a constitutional right, and (2) that the right was clearly established. *See Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011). At a minimum, Ali's claims fail the second requirement.

Adamson. At issue is whether Adamson violated clearly established free-exercise law by telling Ali he needed to request the vegan menu before requesting an alternative menu. A sentence in prison, it is true, does not eliminate an individual's constitutional protections. *Turner v. Safley*, 482 U.S. 78, 84 (1987). But the "complex and intractable problems of prison administration" require due consideration in applying constitutional guarantees. *Shaw v. Murphy*, 532 U.S. 223, 231 (2001) (quotation omitted). Only when a policy "singles out and substantially burdens a prisoner's sincere beliefs" do we ask if it serves a legitimate "penological interest." *Cavin*, 927 F.3d at 460. While prisoners have a right to "an adequate diet" consistent

with their religious beliefs, *Colvin v. Caruso*, 605 F.3d 282, 290 (6th Cir. 2010) (quotation omitted), an "isolated, intermittent, or otherwise de minimis" disruption of that diet does not substantially burden that right, *Mbonyunkiza v. Beasley*, 956 F.3d 1048, 1054 (8th Cir. 2020).

Adamson did not violate Ali's clearly established free-exercise rights. He used his power at the outset to help, not hinder, Ali by recommending him for vegan meals and by reporting that Ali was "sincere in the practice of his faith." R.33-7 at 2. In doing so, he noted that Ali consistently "practic[ed] his faith" and "[a]ttend[ed] all" available services. R.33-7 at 2.

Ali also has not produced evidence that Adamson's targeted action—requesting that Ali receive approval for a vegan meal before seeking an alternative meal—"single[d] out and substantially burden[ed]" his request to eat halal meat. *Cavin*, 927 F.3d at 460. This procedural requirement at worst made Ali fill out two forms to request an alternative diet, not one. And both requests made Ali confirm the same things: that a different menu was "necessary to the practice of [his] designated religion," R.33-3 at 7, and that his beliefs required him to avoid haram meat and consume halal meat. Neither request forced Ali to choose between his faith and his food.

Ali insists that Adamson's recommendation, when combined with Leach's denial, deprived him of halal-compliant meals. But that argument would make Adamson liable for Leach's conduct. Section 1983 liability turns "only on" each officer's "own unconstitutional behavior." *Heyerman v. County of Calhoun*, 680 F.3d 642, 647 (6th Cir. 2012). Adamson's burden required only that Ali receive approval for a vegan meal first. If Leach wrongfully denied that request, it was he who violated Ali's First Amendment right unless Adamson "implicitly authorized, approved, or knowingly acquiesced" in Leach's denial. *Hays v. Jefferson County*, 668 F.2d 869, 874 (6th Cir. 1982). Adamson did not. He recommended Ali for the vegan meal plan. Ali did not offer any evidence that the Deputy Director would have approved his request for a custom diet had he asked. All in all, Adamson did not deprive Ali of the chance to eat meals consistent with his faith.

Leach. Leach also did not violate clearly established First Amendment principles by denying Ali's request for a vegan meal. Because *Turner*'s flexible test established the law for

only obvious violations, we look for similarity "in light of the specific context of the case." *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Ali must identify published "on-point caselaw" at the time of Leach's 2017 denial with "facts similar enough that it squarely governs this one." *Moore v. Oakland County*, 126 F.4th 1163, 1167 (6th Cir. 2025) (quotation omitted).

But Ali does not present any on-point precedent. Our cases hold that prison officials must "provide an adequate diet" consistent with an inmate's "religious dietary restrictions." *Colvin*, 605 F.3d at 290 (quotation omitted). Even in the more demanding context of RLUIPA, zero-tolerance policies rescinding an inmate's religious meal for "mere possession" of one non-compliant snack just "*may* be overly restrictive." *Id.* at 296 (emphasis added). That statement about a statute does not put every administrator on notice of free-exercise constitutional requirements. In this context, our cases routinely permit officials to withdraw prisoners from religious meal plans if they find that a prisoner possessed or consumed food violating their stated religious precepts. *E.g.*, *Berryman v. Granholm*, 343 F. App'x 1, 6 (6th Cir. 2009); *Russell v. Wilkinson*, 79 F. App'x 175, 177 (6th Cir. 2003) (order). That explains why an official may revoke an inmate's pork-free dietary accommodation if he repeatedly purchases pork products from the commissary. *Miles v. Mich. Dep't of Corr.*, No. 19-2218, 2020 WL 6121438, at *3 (6th Cir. Aug. 20, 2020) (order).

Ali suggests that *Berryman* and *Russell* do not apply because they involved revocations of religious-meal privileges already granted, not denials of religious-meal applications. In Michigan, he adds, prisoners receive a hearing and a second chance if officials catch them violating their professed dietary restrictions. But a prison administrator still may reasonably conclude that an applicant with myriad haram purchases does not have an authentic commitment to a halal diet without violating clearly established free-exercise law.

Ali insists that Leach denied his request for unreasonable reasons—and clearly violated *Turner* in doing so—because other individuals attested that they had received approval for a vegan diet despite having purchased non-halal foods. But no evidence shows that these inmates purchased as many haram items as Ali did.

The one case Ali presents—an unpublished order from 2021—does not help. *See Ewing v. Finco*, No. 20-1012, slip op. at 5–6 (6th Cir. Jan. 5, 2021) (order). In addition to being non-precedential, *Ewing* did not specify how many non-halal purchases those prisoners made—and thus could not show whether those inmates' actions fairly compare to Ali's purchases of over a hundred such meals in three months.

We dismiss this appeal in part and affirm in part.

Ali v. Adamson

United States Court of Appeals for the Sixth Circuit

May 1, 2025, Filed

No. 24-1540

Reporter
2025 U.S. App. LEXIS 10646 *; 2025 LX 16712; 2025 WL 1409094

FATHIREE UDDIN ALI, Plaintiff-Appellant, v. STEPHEN E. ADAMSON, Chaplain; DAVID M. LEACH, Special Activities Coordinator; SHANE JACKSON, Warden; MICHIGAN DEPARTMENT OF CORRECTIONS, Defendants-Appellees.

Prior History: *Ali v. Adamson, 132 F.4th 924, 2025 U.S. App. LEXIS 7205, 2025 WL 941291 (6th Cir. Mich., Mar. 28, 2025)*

Core Terms

petition for rehearing, en banc

Counsel: **[*1]** For FATHIREE UDDIN ALI, Plaintiff - Appellant: D Dangaran, Rights Behind Bars, Washington, DC.

FATHIREE UDDIN ALI, Plaintiff - Appellant, Pro se, Freeland, MI.

For FATHIREE UDDIN ALI, Plaintiff - Appellant: Samuel Weiss, Rights Behind Bars, Washington, DC.

For STEPHEN E. ADAMSON, Chaplain, DAVID M. LEACH, Special Activities Coordinator, SHANE JACKSON, Warden, Defendants - Appellees: Christopher Alex, Office of the Attorney General, Lansing, MI.

Judges: BEFORE: SUTTON, Chief Judge; GRIFFIN and MATHIS, Circuit Judges.

Opinion

ORDER

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FATHIREE ALI,

Plaintiff,

Case No. 1:21-cv-71

v.

Hon. Hala Y. Jarbou

STEVE ADAMSON, et al.,

Defendants.
_____/

ORDER

Plaintiff Fathiree Ali, a state prisoner, brought this civil action against several MDOC employees. His complaint centered on the Michigan Department of Corrections' ("MDOC") denial of his religious meal accommodation request. On December 12, 2023, Magistrate Judge Phillip J. Green issued a Report and Recommendation ("R&R") recommending that the Court grant Defendants' motion for summary judgment (ECF No. 32) and dismiss the case. (ECF No. 57.) On January 25, 2024, the Court adopted the R&R over Ali's objections (ECF No. 65) and entered judgment dismissing the case (ECF No. 68). Ali now seeks relief from this Court's order and judgment (ECF No. 71).

Ali submitted the present motion within 28 days of the entry of judgment, thus the Court will construe his motion as a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). Ali presents several arguments for how the Court's opinion erred. None is persuasive.

Qualified Immunity. Defendant Leach denied Ali's request for the vegan-based universal religious meal because Ali had made conflicting commissary purchases prior to his application. As discussed in the Court's opinion, the Sixth Circuit had routinely upheld this approach at the

time of the denial. (1/25/2024 Op. 8, ECF No. 64.) One unpublished opinion has since cast doubt on this approach, *Ewing v. Finco*, Nos. 20-1012, 20-1022, 2021 U.S. App. LEXIS 182 (6th Cir. Jan. 5, 2021), but that case was decided *after* the denial in this case. Thus, the Court granted Leach qualified immunity based on the "clearly established" aspect of the analysis.

Ali argues that this conclusion was palpable error because both the Sixth Circuit and the Supreme Court had clearly established that "zero-tolerance" policies are unconstitutional. He primarily cites *Colvin v. Caruso*, 605 F.3d 282 (6th Cir. 2010) and *Gonzales v. Carhart*, 550 U.S. 124 (2007) for his position. Both cases are inapposite. To quickly dispose of it, *Gonzales* dealt with federal statutes regulating abortion procedures and is plainly irrelevant. *Gonzales*, 550 U.S. at 132.

Colvin is more on-point. That case involved a prisoner who was automatically removed from the religious meal program based on a one-time violation involving possession of non-compliant (non-kosher) protein powder. *Colvin*, 605 F.3d at 287. The court of appeals noted "MDOC's policy of removing a prisoner from the kosher-meal program for mere possession of a nonkosher food item may be overly restrictive of inmates' religious rights." *Id.* at 296. First, the plaintiff in *Colvin* differs from Ali in that he had already been approved for the religious meal plan. Second, *Colvin* preceded cases in which the Sixth Circuit upheld consequences for purchasing non-conforming items from the commissary both before and after approval of the meal accommodation request. *See, e.g.*, *Miles v. Mich. Dep't of Corrs.*, No. 19-2218, 2020 WL 6121438, at *2-3 (6th Cir. Aug. 20, 2020) (upholding denial of a religious meal accommodation request because plaintiff had purchased non-conforming products from the commissary prior to his request); *Swansbrough v. Martin*, No. 1:14-CV-1246, 2017 WL 64917, at *2 (W.D. Mich. Jan. 6, 2017) (same); *Ewing*, 2021 U.S. App. LEXIS at *8 ("There is no dispute that a prisoner, once

interpretation. Conversely, the MDOC *did* make Ali aware of its definition of halal. There is no factual dispute to resolve—a prisoner cannot complain of a denial of a religious accommodation request when he did not make that request known.

Ali's Kite Request. One piece of evidence the Court considered when determining whether Ali requested the standard vegan halal diet rather than a non-vegan halal diet was his religious interview and kite. Here, the Court examined the language Ali used and determined "one could reasonably conclude that a diet excluding non-compliant meat could be considered halal and could conform with Ali's request." (*Id.*) Further, the Court noted Ali's acknowledgment on his request of MDOC Policy Directive 05.03.150 which clearly states that the religious meal being requested was vegan.

Ali takes issue with the Court's characterization of his kite as one attached to the religious interview request and claims that the kite was instead submitted on September 17, 2017, days before the interview which took place on September 25, 2017. It is unclear what impact this has on the analysis. Regardless, the Court was merely pointing to the same evidence that Ali cited in his objection to the R&R, which was labeled "Ali's Kite Request (R.33-7, PgID.196)" (Pl.'s Obj.s to R&R 5, ECF No. 60). That document clearly shows a date of September 25, 2017 and was accurately described in this Court's opinion. There is no error to correct and, even if there were, Ali has failed to explain how it would alter the analysis.

Request Conversion. The Court disagreed with Ali's contention that Defendant Adamson, who conducted the religious accommodation interview, improperly converted Ali's request from a halal diet to a vegan diet. It noted, "Properly framed . . . Adamson did what Ali requested—he recommended approval of the universal religious diet that Ali initially sought." (1/25/2024 Op. 7.) At the time, Ali had yet to present evidence to the contrary. He has no new evidence to present

approved for religious meals, is prohibited from possessing food items forbidden by the teaching of the prisoner's religion."). These later conclusions by the Sixth Circuit more closely resemble the instant case and thus have more bearing on the qualified immunity analysis. *Colvin* is insufficient to dislodge the Court's qualified immunity conclusion.

Ali cites a few other cases in his qualified immunity section, but all suffer from similar flaws. The Court's qualified immunity conclusion stands.

Halal Definition Dispute. Both the magistrate judge and the Court concluded that Ali's request for a halal diet inclusive of halal meat—as opposed to a halal diet which could be satisfied by the MDOC's vegan-based universal religious diet—was raised for the first time in this lawsuit. To that point, the Court noted:

> Ali contends that "[t]he record evidence demonstrates that [his] request was specific, it was for a 'halaal' diet, not vegan diet." (Pl.'s Objs. 5, ECF No. 60.) But there appears to be a fundamental disagreement as to what is and is not halal. The MDOC, and indeed other Muslims according to Ali (Pl.'s Resp. to Def.'s Mot. for Summ. J. 4, ECF No. 53), interpret the universal religious diet offered by MDOC as a halal diet. The universal religious diet also happens to be vegan, but vegan and halal are not mutually exclusive. Conversely, Ali believes that a vegan diet and a halal diet are mutually exclusive. The parties appear to have used the same term to mean different things.

(1/25/2024 Op. 6.) The Court cited other aspects of the record which indicated that the MDOC was reasonable in assuming that Ali was requesting the universal religious diet, not an alternative religious diet (which has a separate approval process).

Ali contends that the disagreement as to the definition of halal is the sort of factual dispute that must be decided by a jury. Not so. The Court need not define what is or is not halal. That is immaterial to the outcome of this case. Rather, the Court was explaining where the parties' wires crossed. The MDOC interpreted Ali's request as a request for a vegan diet. That interpretation was reasonable *based on the facts before it*. That Ali has an idiosyncratic view of the definition of halal is immaterial because the Court found that he did not make the MDOC aware of that

today. Still, he disagrees with the result, arguing that the Court's conclusion flows from its improper crediting of the MDOC's definition of halal rather than his own. Again, that is not what the Court did. Adamson recommended approval of the vegan diet based on what Ali requested *as shown by the evidence*. Ali offers argument—not evidence—to the contrary, and that argument is unpersuasive.

Ali points to no legal error that warrants a different result; he merely rehashes the same arguments he made initially. That is insufficient to obtain relief under Rule 59(e).

New Evidence. Ali's complaint included an Equal Protection class-of-one claim. The Court examined the affidavits Ali placed into evidence and concluded that he had "not provided sufficient evidence to support the conclusion that he is similarly situated to [the affiants] in all relevant respects." (1/25/2024 Op. 7.) Each affidavit featured some defect that precluded Ali from establishing that he was similarly situated to the affiant. Ali now attempts to cure those defects by attaching updating affidavits. It is too late to do so.

To consider new evidence at this stage, the evidence must be "newly discovered evidence," meaning that it "must have been previously unavailable." *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999) (discussing the new evidence standard of Federal Rule 59(e)) (internal quotations omitted). The evidence must not have been discoverable through the exercise of reasonable diligence. *Cf.* Fed. R. Civ. P. 60(b)(2) (courts apply the same standards to motions under rules 59(e) and 60(b), *see* Wright, Miller, & Kane, Fed. Prac. & Proc.: Civ. § 2859 (3d) (collecting cases))

Here, Ali submits updated affidavits from the same affiants he relied upon earlier, including himself. He submits these affidavits in response to defects identified by this Court. But these affidavits are not newly discovered evidence. A party cannot tweak evidence already submitted

to respond to the Court's conclusions. It is axiomatic that these types of motions do not present a losing party with an opportunity for a second bite at the apple.

Ali suggests that he should be granted leeway to submit these updated affidavits because he is proceeding pro se. While it is true that Courts generally construe a pro se litigant's *pleadings* more liberally, they are still "expected to know and follow the court's rules." *Field v. Cnty. of Lapeer*, 238 F.3d 420, at *2 (6th Cir. 2000) (table). The Court cannot give Ali a second shot at substantiating his claims merely because he is proceeding pro se. He may only present newly discovered evidence that could not have been discovered through the exercise of reasonable diligence; that is not the case here.

Accordingly,

IT IS ORDERED that Plaintiff Ali's motion for reconsideration (ECF No. 71), which this Court construes as a motion to alter or amend the judgment, is **DENIED**.

Dated: May 31, 2024

/s/ Hala Y. Jarbou
HALA Y. JARBOU
CHIEF UNITED STATES DISTRICT JUDGE

Ali v. Adamson

United States District Court for the Western District of Michigan, Southern Division

January 25, 2024, Decided; January 25, 2024, Filed

Case No. 1:21-cv-71

Reporter
2024 U.S. Dist. LEXIS 13228 *; 2024 WL 277517

FATHIREE ALI, Plaintiff, v. STEVE ADAMSON, et al., Defendants.

Subsequent History: Reconsideration denied by *Ali v. Adamson, 2024 U.S. Dist. LEXIS 112115, 2024 WL 3107571 (W.D. Mich., May 31, 2024)*

Affirmed by, in part, Appeal dismissed by, in part, As moot *Ali v. Adamson, 2025 U.S. App. LEXIS 7205 (6th Cir. Mich., Mar. 28, 2025)*

Prior History: *Ali v. Adamson, 2023 U.S. Dist. LEXIS 234310 (W.D. Mich., Dec. 12, 2023)*

Core Terms

religious, diet, halal, magistrate judge, accommodation, meal, recommended, vegan, universal, qualified immunity, requests, objects, food, meat, deputy director, discovery, notice, menu, summary judgment, questions, kite

Counsel: **[*1]** Fathiree Ali #175762, plaintiff, Pro se, Freeland, MI USA.

For Steve Adamson, Chaplain, David Leach, Special Activities Coordinator, Shane Jackson, Warden, defendants: Jennifer Ann Foster, MI Dept Attorney General (MDOC), Lansing, MI USA.

For Mediator, mediator: Philip A. Grashoff, Jr., LEAD ATTORNEY, Smith Haughey Rice & Roegge PC (Grand Rapids), Grand Rapids, MI USA.

Judges: Hon. HALA Y. JARBOU, CHIEF UNITED STATES DISTRICT JUDGE.

Opinion by: HALA Y. JARBOU

Opinion

Plaintiff Fathiree Ali, a state prisoner, brings this civil action under *42 U.S.C. § 1983* and the *Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq.*, against several Michigan Department of Corrections ("MDOC") employees. Specifically, he claims that Defendants Steve Adamson, David Leach, and Shane Jackson violated his *First Amendment* Free Exercise right, his *Fourteenth Amendment* right to Equal Protection, and RLUIPA when they denied his request for a halal diet. Ali also claims that Defendants' actions violated the *First Amendment's Establishment Clause*.

On December 12, 2023, Magistrate Judge Phillip J. Green issued a Report and Recommendation ("R&R") recommending that the Court grant Defendants' motion for summary judgment (ECF No. 32) and dismiss the case (ECF No. 57). Before the Court are Ali's objections to the R&R (ECF No. 60).

I. STANDARD

Under *Rule 72 of the Federal Rules of Civil Procedure*,

> the district judge must determine de novo **[*2]** any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b)(3).

Proper objections require specificity. "The objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious." *Miller v. Currie, 50 F.3d 373, 380 (6th Cir. 1995)*. Vague, conclusory objections are insufficient, as

are mere restatements of a plaintiff's complaints. *See id.* Because Ali is proceeding pro se, this Court will construe his objections liberally. *See Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972)*.

II. BACKGROUND

Ali is a devout Muslim whose faith requires him to consume only "halal" food—food prepared in accordance with Islamic law. The MDOC offers a universal religious meal that is vegan, kosher, and halal. If a prisoner believes this meal does not accommodate his particular religious needs, he may request an alternative religious menu. Both diets must be approved, albeit by different people—the universal religious meal must be approved by the Special Activities Coordinator ("SAC") while any alternative menu must be approved by the MDOC Deputy Director.

To Ali, a halal **[*3]** diet is one that must include halal meat; a vegetarian or vegan meal is insufficient, even though it may be sufficient for other Muslims. In August 2017, Ali requested a religious meal accommodation. Procedurally, Ali believed he first needed to request to be put on the prison's universal religious diet program, the diet approved by the SAC, Defendant Leach. He believed he could then later request a separate accommodation to include halal meat.

To process his religious meal accommodation request, Defendant Adamson, the chaplain, first interviewed Ali and administered a "faith test." Adamson forwarded to Leach his recommendation that Ali's request be granted and that he be placed on the universal religious diet. Leach reached a different conclusion and denied the request. Leach asserts that he denied Ali's request because Ali had purchased, prior to his religious accommodation request, food from the prison commissary that conflicted with the religious accommodations he was requesting.

The magistrate judge recommended granting summary judgment to each of the three remaining Defendants. For Defendant Jackson, the magistrate judge concluded that Ali failed to present any evidence of Jackson's **[*4]** involvement in the events giving rise to the complaint. For Defendant Adamson, the magistrate judge concluded that Ali presented no evidence that Adamson did anything to impede or deny the only request properly before the court—the request for the universal religious diet. Finally, for Defendant Leach, the magistrate judge concluded that while Ali may have adduced sufficient evidence to put into question whether Leach violated his Free Exercise rights, Leach was nevertheless protected by qualified immunity. The magistrate judge also recommended that Leach be granted summary judgment on Ali's remaining claims (RLUIPA, Equal Protection, and *Establishment Clause*) because Leach is an improper defendant under RLUIPA and Ali produced no evidence that Leach treated him differently than other similarly situated prisoners or otherwise favored one religion over another.

III. ALI'S OBJECTIONS TO THE R&R

Ali lodges several objections to the R&R, some generally applicable and some specific to Defendants Adamson and Leach. Note, Ali makes no objection to the R&R's recommendations related to Defendant Jackson. For the reasons herein, the Court will overrule each of Ali's objections.

A. General Case Management Objections [*5]

Ali first makes two broad objections related to some case management aspects of this action, which he styles "Argument 1." Several of the magistrate judge's recommendations relate to Ali's failure to adduce sufficient evidence despite a full and fair opportunity to participate in discovery. Ali objects to this conclusion, arguing that Defendants refused to participate in discovery and withheld material evidence. Ali also objects to an earlier ruling by the magistrate judge denying Ali's motion to amend his complaint. Although the objections are combined, the Court will address them separately.

1. Discovery

Ali previously filed a motion to compel following the close of discovery (ECF No. 31) which the magistrate judge denied on October 12, 2023 (ECF No. 40). In his objection to the R&R, Ali makes no new discovery-related arguments and points to no specific discovery requests. Thus, the Court will construe his objection as a motion for reconsideration of a nondispositive order under *Federal Rule of Civil Procedure 72(a)*.

Rule 72(a) requires Courts to review for clear error any nondispositive order timely objected to. *Fed R. Civ P. 72(a)*. To be timely, a party must object within fourteen days after being served with a copy of the order. *Id.* Even allowing **[*6]** for a liberal prison mailbox rule, the

time for Ali to file his objection has long passed. This alone is sufficient reason to overrule Ali's objection. *See, e.g.*, Green v. Bel Hendersonville, LLC, No. 3:19-CV-0833, 2020 U.S. Dist. LEXIS 22580, 2020 WL 619842, at *1 (M.D. Tenn. Feb. 10, 2020) (citing Pilgrim v. Littlefield, 92 F.3d 413, 416 (6th Cir. 1996) ("the lenient treatment generally accorded pro se litigants has limits"); Greer v. Home Realty Co. of Memphis, Inc., No. 2:07-CV-02639-SHM, 2010 U.S. Dist. LEXIS 142817, 2010 WL 6512339, at *2 (W.D. Tenn. July 12, 2010) ("Although district courts may liberally construe the federal and local rules for *pro se* litigants, even *pro se* litigants are obligated to follow these rules.")).

Regardless, Ali points to no clear error in the magistrate judge's October 12, 2023 order that would warrant modification. The magistrate judge concluded that Ali's motion was untimely per the Case Management Order ("CMO") (ECF No. 23), that Ali failed to articulate good cause for the delay, and that Ali failed to attach or sufficiently describe the discovery requests in dispute, as required by Local Rule of Civil Procedure 7.1(b). Ali clearly disagrees with the October 12, 2023 order, but he offers no case law, evidence, or argument as to why this Court should modify it. The Court thus declines to do so.

2. Amendment

Ali filed a motion for leave to amend his complaint on August 10, 2023 (ECF No. 29), eighty days after the deadline set in the CMO. (*See* CMO ¶ 3.) The magistrate judge denied this motion in his October **[*7]** 12, 2023 order, the same order in which he denied Ali's motion to compel. Ali's objection to this portion of the order fails for similar reasons.

First, Ali's objection is again untimely under Federal Rule 72(a). Second, Ali identifies no clear error for which the order should be disturbed. The magistrate judge rejected Ali's motion to amend because Ali failed to show good cause, as required by *Federal Rule of Civil Procedure 16*. The magistrate judge also concluded that any amendment would be futile. In his present objection, Ali addresses neither conclusion. Thus, the Court will reject Ali's objection to the magistrate judge's order denying his motion to amend the complaint.

In summary, the Court will overrule both of Ali's general objections.

B. Objections #2 and #3—Vegan vs. Halal Accommodation

At bottom, Ali seeks in this action a religious diet accommodation that includes halal meat. Defendants contend that Ali made this request—a diet including halal meat rather than the universal religious meal diet—for the first time in this lawsuit. The magistrate judge agreed. But Ali objects, arguing that his requests, dating back to 2017, specifically requested his version of a halal diet. Thus, Ali argues that Defendants Adamson and Leach improperly **[*8]** "converted" his request for a halal accommodation to a request for a vegan accommodation. Ali labels these objections as objections #2 and #3.

Ali contends that "[t]he record evidence demonstrates that [his] request was specific, it was for a 'halaal' diet, not vegan diet." (Pl.'s Objs. 5, ECF No. 60.) But there appears to be a fundamental disagreement as to what is and is not halal. The MDOC, and indeed other Muslims according to Ali (Pl.'s Resp. to Def.'s Mot. for Summ. J. 4, ECF No. 53), interpret the universal religious diet offered by MDOC as a halal diet. The universal religious diet also happens to be vegan, but vegan and halal are not mutually exclusive. Conversely, Ali believes that a vegan diet and a halal diet *are* mutually exclusive. The parties appear to have used the same term to mean different things.

Ali points specifically to his "kite" requesting a religious meal accommodation as evidence clearly establishing that he sought a non-vegan halal diet from the beginning. (*See generally* Accommodation Interview and Kite, ECF No. 33-7.) A review of the kite suggests otherwise. In the religious meal interview questions administered by Adamson and attached to the kite, Ali repeatedly **[*9]** referred to a halal diet's exclusion of meat not "handled in accordance to Islamic tene[]ts." (*Id.* at 3-4.) But nowhere did Ali refer to a halal diet as one *requiring* compliant meat. In other words, based on Ali's responses to Adamson's interview questions, one could reasonably conclude that a diet excluding non-compliant meat could be considered halal and could conform with Ali's request.

To remove any remaining doubt, the kite also specifically included a declaration by Ali that he understood the policies of the Religious Meal Program, including Policy Directive ("PD") 05.03.150. This PD provides that the MDOC "offers a vegan menu to meet the religious dietary needs of prisoners" and that the "Vegan menu shall comply with Kosher and Halal religious tenets." (PD 05.03.150 ¶ OO, ECF No. 33-3.) It

further states that "[a] prisoner who believes the Vegan menu does not meet his/her religious dietary needs may request an alternative menu[,]" which must be "developed and provided only with approval of the Deputy Director[.]" *Id.* Ali was thus on notice that the accommodation he was seeking was defined as one where vegan was not mutually exclusive with halal.

The evidence does not support Ali's **[*10]** contention that Defendants Adamson and Leach improperly converted Ali's request for a halal diet into a request for a vegan diet. Instead, the evidence establishes that Ali submitted a request for the MDOC's definition of a halal diet—a diet that could also be vegan. Ali's objections #2 and #3 will thus be overruled.

C. Objection #1—Defendant Adamson's Approval of Ali's Request

Ali makes one additional objection related to Defendant Adamson. Properly framed, Ali's "Objection #1" related to Adamson falls away. The magistrate judge concluded that Adamson submitted sufficient evidence establishing that Adamson recommended *approval* of Ali's request, not denial. (Adamson Aff. ¶¶ 7-9, ECF No. 33-8.) Ali objects to this conclusion, but his argument rests on viewing Adamson's "conversion" of Ali's request as a denial. In other words, to Ali, Adamson's nominal recommendation that Ali's request for the universal religious diet be approved did not cure the initial violation of Adamson's "improper conversion." But this Court disagrees with Ali's contention that Adamson converted the request. Thus, Adamson did what Ali requested—he recommended approval of the universal religious diet that Ali initially **[*11]** sought. Without evidence to the contrary, Ali's objection will be overruled. Ali has failed to establish that Defendant Adamson in any way impeded his religious accommodation request, and thus summary judgment for Adamson is appropriate.

D. Objections Related to Defendant Leach

Ali makes two additional objections related to Leach. Objection #4 relates to the magistrate judge's conclusion that Leach is protected by qualified immunity for Ali's Free Exercise claim. Objection #5 relates to Ali's Equal Protection claim.

1. "Objection #4"—Qualified Immunity

The magistrate judge decided Ali's Free Exercise claim against Leach on qualified immunity grounds. The Sixth Circuit "follows a two-tiered inquiry to determine if an officer is entitle to qualified immunity." *Martin v. City of Broadview Heights, 712 F.3d 951, 957 (6th Cir. 2013)* (internal quotation marks omitted). First, the court "determine[s] if the facts alleged make out a violation of a constitutional right." *Id.* Second, the court "ask[s] if the right at issue was 'clearly established' when the event occurred such that a reasonable officer would have known that his conduct violated it." *Id.* A court may resolve the two steps in any order. "If either one is not satisfied, qualified immunity will shield **[*12]** the officer from civil damages." *Id.*

Leach denied Ali's request for the universal religious meal because Ali had purchased, prior to his accommodation request, items from the commissary that conflicted with his stated religious requirements. At the time of Leach's denial, courts in the Sixth Circuit had routinely upheld religious accommodation denials in such circumstances. *See, e.g., Miles v. Mich. Dep't of Corrs., No. 19-2218, 2020 U.S. App. LEXIS 26666, 2020 WL 6121438, at *2-3 (6th Cir. Aug. 20, 2020)* (finding no Free Exercise or RLUIPA violation where the MDOC denied a prisoner's religious accommodation request because he had purchased non-conforming products from the commissary prior to his request); *Swansbrough v. Martin, No. 1:14-CV-1246, 2017 U.S. Dist. LEXIS 2004, 2017 WL 64917, at *2 (W.D. Mich. Jan. 6, 2017)* (same). However, the Sixth Circuit has since cast doubt on this approach. In an unpublished opinion, the Sixth Circuit noted, "there is no dispute that a prisoner, once approved for religious meals, is prohibited from possessing food items forbidden by the teachings of the prisoner's religion," but questioned the reasonableness of a denial where the prisoner "had yet to seek approval for religious meals when they purchased non-compliant food items." *Ewing v. Finco*, Nos. 20-1012/20-1022, order at 5 (6th Cir. Jan. 5, 2021).

The magistrate judge did not reach a conclusion as to whether Leach's alleged actions violated Ali's Free Exercise rights; however, he concluded that even **[*13]** if they did, Leach is nevertheless protected by qualified immunity because his actions would not have been considered violative *at the time*. In other words, Ali failed at the "clearly established" step of the qualified immunity analysis.

Ali objects to this conclusion, arguing that "the law had long been clearly establish[ed]." (Pl.'s Objs. 8.) To

support his objection, Ali cites several out-of-circuit cases including Borkholder v. Lemmon, 983 F. Supp. 2d 1013 (N.D. Ind. 2013); Reed v. Faulkner, 842 F.2d 960 (7th Cir. 1988); Vinning-El v. Evans, 657 F.3d 591 (7th Cir. 2011); and Isbell v. Ryan, No. CV 11-0391-PHX-JAT, 2011 U.S. Dist. LEXIS 140469, 2011 WL 6050337 (D. Ariz. Dec. 6, 2011). These cases are inapposite. As the Sixth Circuit has observed, "our sister circuits' precedents are usually irrelevant to the 'clearly established' inquiry." Ashford v. Raby, 951 F.3d 798, 804 (6th Cir. 2020). An exception is made only for "'extraordinary cases' where out-of-circuit decisions 'both point unmistakably to' a holding and are '*so clearly* foreshadowed by applicable direct authority as to leave *no doubt*' regarding that holding." *Id.* (quoting Ohio Civil Serv. Emps. Ass'n v. Seiter, 858 F.2d 1171, 1177 (6th Cir. 1988)).

Ali has failed to explain how this is the sort of "extraordinary case" where out-of-circuit decisions are relevant to the clearly established inquiry. Indeed, the Sixth Circuit had approved of the MDOC's approach until as recently as 2020. *See* Miles, 2020 U.S. App. LEXIS 26666, 2020 WL 6121438, at *2-3. Thus, "applicable direct authority" at the time of Leach's actions in October 2017 pointed in the opposite direction—denying **[*14]** a religious meal accommodation request based on prior conflicting purchases was not considered violative of a prisoner's Free Exercise rights. Ali's qualified immunity objection will thus be overruled.

2. "Objection #6"—Equal Protection

The magistrate judge found that Ali failed to present evidence that Leach had granted other prisoners' religious meal accommodation requests despite conflicting food purchases or possessions. Thus, the magistrate judge concluded that Ali has failed to substantiate his "class-of-one" Equal Protection claim. Ali objects, arguing that affidavits from other prisoners demonstrate that Leach did treat Ali differently from other similarly situated prisoners, *i.e.*, Muslim prisoners who were approved a religious diet despite prior conflicting food purchases.

Ali points to two affidavits which he attached to his summary judgment motion and asks this Court to take judicial notice of three affidavits which were submitted by the parties in the *Ewing* litigation. As an initial matter, affidavits submitted as evidence in another case are not the sort of facts which this Court may take judicial notice of. Fed. R. Evid. 201; *see also, e.g.*, Reaves v. Int'l Paper Co. Long-Term Disability Plan, No. 07-2168 M1/P, 2008 U.S. Dist. LEXIS 47263, 2008 WL 2437574, at *2 (W.D. Tenn. June 13, 2008). The contents of these affidavits are neither **[*15]** generally known within the territorial jurisdiction of the trial court nor capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned. Fed. R. Evid. 201(b)(1), (2). It may be appropriate for this Court to take judicial notice of the *fact* that the affidavits were filed, *see* Reaves, 2008 U.S. Dist. LEXIS 47263, 2008 WL 2437574, at *2, but Ali is asking the Court to take notice of the *content* of the affidavits. That is not an appropriate application of Federal Rule of Evidence 201(b). *Id.* The Court thus declines to take judicial notice of the *Ewing* affidavits.

For the two affidavits properly before this Court, only one could potentially substantiate Ali's claim. First, Ali's reliance on the affidavit of Johnny Jenkins is misplaced because that affidavit does not relate to Leach. (Jenkins Aff. ¶ 3, ECF No. 52-2.) A plaintiff in a § 1983 suit must prove "that each Government-official defendant, through his own individual actions, has violated the Constitution." Ashcroft v. Iqbal, 556 U.S. 662, 663, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). Thus, Ali cannot use the affidavit of another prisoner whose request was approved by another government official to show that this particular prisoner, Ali, was treated differently by this particular defendant, Leach.

That leaves the affidavit of Daw'ud ibn Clark. Unlike the Jenkins affidavit, this affidavit **[*16]** does specifically mention Leach. (Clark Aff. ¶ 8.) Clark's affidavit indicates that he was eventually approved for the universal religious diet, despite having previously purchased non-conforming foods. (*Id.* ¶ 6.) But the affidavit also indicates that Clark's request was initially denied in 2014 and that it was only ultimately approved after he reapplied in 2015. (*Id.* ¶¶ 8-9.) The affidavit offers no clues as to why Clark's initial request was denied or when he purchased non-conforming foods. But these are the critical questions that need to be answered in order to evaluate Ali's class-of-one Equal Protection claim. In other words, Ali has not provided sufficient evidence to support the conclusion that he is similarly situated to affiant Clark in all relevant respects. *See Tree of Life Christian Sch v. City of Upper Arlington, 905 F.3d 357, 368 (6th Cir. 2018).* As such, Ali's equal protection objection will be overruled.

E. "Objection #5"—RLUIPA

A plaintiff can only obtain prospective relief under RLUIPA. *See* Haight v. Thompson, 763 F.3d 554, 570 (6th Cir. 2014) ("RLUIPA does not permit money damages against state prison officials[.]"); *see also* Mitchell v. Schroeder, No. 2:21-CV-109, 2022 U.S. Dist. LEXIS 16172, 2022 WL 263212, at *8-9 (W.D. Mich. Jan. 28, 2022). Ali is seeking such prospective relief—he seeks an order requiring Defendants to grant his request for an alternative religious diet that includes halal meat. However, the magistrate **[*17]** judge concluded that Ali failed to name a proper defendant. The proper defendants in an action for injunctive relief "are the ones who have the power to provide the relief sought, whether or not they were involved in the allegedly illegal conduct at issue." Hall v. Trump, No. 3:19-CV-00628, 2020 U.S. Dist. LEXIS 38349, 2020 WL 1061885, at *3 (M.D. Tenn. Mar. 5, 2020) (discussing Ex parte Young, 209 U.S. 123, 157, 28 S. Ct. 441, 52 L. Ed. 714 (1908) and quoting Taafe v. Drake, No. 2:15-CV-2870, 2016 U.S. Dist. LEXIS 57397, 2016 WL 1713550, at *5 (S.D. Ohio Apr. 29, 2016)). Thus, the R&R recommends dismissal of Ali's RLUIPA claim because neither Leach, nor Adamson, nor Jackson has the power to authorize Ali's requested relief—that relief can only come from the MDOC Deputy Director. (*See* PD 05.03.150 ¶ OO.)

Ali objects, arguing that this policy "is not set in stone" and that it is "arbitrarily enforced" based on three cases, Spearman v. Mich., No 1:18-CV-463, 2018 U.S. Dist. LEXIS 85163, 2018 WL 2315786 (W.D. Mich. May 22, 2018); Orum v. Mich. Dep't of Corr., No. 2-15-CV-00109, 2019 U.S. Dist. LEXIS 80255, 2019 WL 2076996 (W.D. Mich. Apr. 8, 2019); and Martin v. McKee, No 2:18-CV-00066, 2020 U.S. Dist. LEXIS 105635, 2020 WL 3259524 (W.D. Mich. May 26, 2020). None is convincing. In *Spearman*, for example, the plaintiff submitted religious accommodation requests directly to the MDOC Deputy Director without going through lower-level prison officials first. Spearman, 2018 U.S. Dist. LEXIS 85163, 2018 WL 2315786, at *4. The requests were denied, in part because the plaintiff should have sent his request to the warden first. *Id.*

Ali takes this to mean that the warden had the power to approve the plaintiff's request, and thus that the MDOC policy requiring deputy director approval is selectively enforced. Ali is mistaken. An administrative process that involves lower-level **[*18]** employees screening a request before sending it on to the ultimate decision maker is unremarkable. It certainly does not mean that lower-level employees have the decision-making authority within the meaning of the MDOC policy. In fact, the plaintiff in *Spearman* did what Ali failed to do—he named *both* the lower-level employees involved in screening other requests *and* the Deputy Director who had ultimate authority to issue the relief he sought. *Id.* at *1.

Ali's other cited cases suffer from similar flaws. They also involve suits naming the Deputy Director and thus do not involve the incorrect defendant issue Ali faces here. Ali's objection as to his RLUIPA claim will be overruled.

IV. CONCLUSION

None of Ali's objections convince this Court to reach a different conclusion than that reached by the magistrate judge. This Court also agrees with the portions of the R&R that Ali did not object to. To summarize, Ali has failed to establish a genuine dispute of material fact as to his *Free Exercise, Establishment Clause*, and Equal Protection claims against all remaining Defendants. He has also failed to name a proper defendant for his RLUIPA claim. As such, the Court will grant Defendants' summary judgment motion and terminate the **[*19]** case.

An order will enter consistent with this Opinion.

Dated: January 25, 2024

/s/ Hala Y. Jarbou

HALA Y. JARBOU

CHIEF UNITED STATES DISTRICT JUDGE

ORDER

In accordance with the opinion entered this date:

IT IS ORDERED that the report and recommendation ("R&R") of the magistrate judge (ECF No. 57) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' motion for summary judgment (ECF No. 32) is **GRANTED**.

IT IS FURTHER ORDERED that all of Plaintiff's remaining claims are **DISMISSED**.

IT IS FURTHER ORDERED that the Court declines to certify that an appeal would not be taken in good faith.

Because all claims have been dismissed, the Court will enter a judgment consistent with this Order dismissing the case.

Dated: January 25, 2024

/s/ Hala Y. Jarbou

HALA Y. JARBOU

CHIEF UNITED STATES DISTRICT JUDGE

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Ali v. Adamson

United States District Court for the Western District of Michigan, Southern Division

December 12, 2023, Decided; December 12, 2023, Filed

Case No. 1:21-cv-71

Reporter
2023 U.S. Dist. LEXIS 234310 *

FATHIREE ALI, #175762, Plaintiff, v. STEVE ADAMSON, et al., Defendants.

Subsequent History: Adopted by, Objection overruled by, Summary judgment granted by, Dismissed by *Ali v. Adamson, 2024 U.S. Dist. LEXIS 13228 (W.D. Mich., Jan. 25, 2024)*

Prior History: *Ali v. Adamson, 2021 U.S. Dist. LEXIS 60535, 2021 WL 1186229 (W.D. Mich., Mar. 30, 2021)*

Core Terms

religious, recommends, vegan, accommodation, meals, diet, summary judgment, alleges, halal, menu, undersigned, food, religion, inmates, constitutional right, requests, non-moving, violates, rights, summary judgment motion, equal protection claim, penological interest, injunctive relief, religious belief, regulation, approve

Counsel: **[*1]** Fathiree Ali #175762, plaintiff, Pro se, Freeland, MI USA.

For Steve Adamson, Chaplain, David Leach, Special Activities Coordinator, Shane Jackson, Warden, defendants: Jennifer Ann Foster, MI Dept Attorney General (MDOC), Lansing, MI USA.

For Mediator, mediator: Philip A. Grashoff, Jr., LEAD ATTORNEY, Smith Haughey Rice & Roegge PC (Grand Rapids), Grand Rapids, MI USA.

Judges: PHILLIP J. GREEN, United States Magistrate Judge. Hon. Hala Y. Jarbou.

Opinion by: PHILLIP J. GREEN

Opinion

REPORT AND RECOMMENDATION

This matter is before the Court on Defendants' Motion for Summary Judgment. (ECF No. 32). Pursuant to *28 U.S.C. 636(b)(1)(B)*, the undersigned recommends that Defendants' motion be granted and this action terminated.

BACKGROUND

Plaintiff is presently incarcerated with the Michigan Department of Corrections (MDOC) at the Saginaw Correctional Facility (SRF). The events giving rise to this action occurred at the Carson City Correctional Facility (DRF). Plaintiff initiated this action against DRF Chaplain Steve Adamson, MDOC Special Activities Coordinator David Leach, DRF Warden Shane Jackson, and the MDOC. In his complaint (ECF No. 1) Plaintiff alleges the following.

Plaintiff is a devout Muslim whose faith obligates him to abstain from eating **[*2]** food that is not prepared in accordance with Islamic law. Plaintiff must, therefore, consume only "halal" foods. Moreover, a vegetarian or vegan diet is insufficient as Plaintiff's diet must include halal meat and dairy products. In August 2017, Plaintiff submitted a request to receive a halal diet. On September 25, 2017, Defendant Adamson interviewed Plaintiff and administered a "faith test." Adamson subsequently forwarded his recommendation on the matter to Defendant Leach. Plaintiff's request for a halal diet was denied in October 2017.

Plaintiff alleges that the decision to deny his request for a halal diet: (1) violates his *First Amendment* right to freely exercise his religion; (2) violates the *First Amendment's Establishment Clause*; (3) violates the Religious Land Use and Institutionalized Persons Act

(RLUIPA); and (4) violates his right to the equal protection of the laws. Plaintiff's claims against the MDOC were dismissed on screening. (ECF No. 7-8). Defendants Adamson, Leach, and Jackson now move for summary judgment. Plaintiff has responded to Defendants' motion. The Court finds that oral argument is unnecessary. *See* W.D. Mich. LCivR 7.2(d).

SUMMARY JUDGMENT STANDARD

Summary judgment "shall" be granted "if the movant shows that there is no genuine dispute **[*3]** as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Whether a fact is "material" depends on "whether its resolution might affect the outcome of the case." Harden v. Hillman, 993 F.3d 465, 474 (6th Cir. 2021).

A party moving for summary judgment can satisfy its burden by demonstrating that the non-moving party, "having had sufficient opportunity for discovery, has no evidence to support an essential element of his or her case." Minadeo v. ICI Paints, 398 F.3d 751, 761 (6th Cir. 2005). Once the moving party makes this showing, the non-moving party "must identify specific facts that can be established by admissible evidence, which demonstrate a genuine issue for trial." Amini v. Oberlin College, 440 F.3d 350, 357 (6th Cir. 2006). The existence of a mere scintilla of evidence in support of the non-moving party s position, however, is insufficient. Daniels v. Woodside, 396 F.3d 730, 734-35 (6th Cir. 2005).

While the Court must view the evidence in the light most favorable to the non-moving party, that party "must do more than simply show that there is some metaphysical doubt as to the material facts." Amini, 440 F.3d at 357. The non-moving party "may not rest upon [his] mere allegations," but must instead present "significant probative evidence" establishing that "there is a genuine issue for trial." Pack v. Damon Corp., 434 F.3d 810, 813-14 (6th Cir. 2006). Likewise, the non-moving party cannot merely "recite the incantation, credibility, and have a trial **[*4]** on the hope that a jury may disbelieve factually uncontested proof." Fogerty v. MGM Group Holdings Corp., Inc., 379 F.3d 348, 353-54 (6th Cir. 2004).

Accordingly, summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party s case, and on which that party will bear the burden of proof at trial." Daniels, 396 F.3d at 735. Stated differently, the "ultimate question is whether the evidence presents a sufficient factual disagreement to require submission of the case to the jury, or whether the evidence is so one-sided that the moving parties should prevail as a matter of law." Harden, 993 F.3d at 474.

ANALYSIS

I. Defendant Jackson

In his complaint, Plaintiff specifically references Defendant Jackson in the caption and in the section identifying the parties. (ECF No. 1). Defendant Jackson is not identified anywhere else in Plaintiff's complaint and no factual allegations are advanced against him specifically. Instead, Plaintiff repeatedly alleges in his complaint that "the defendants" took, or failed to take, some particular action. As Defendant Jackson argues, however, such allegations are insufficient to maintain a claim against him.

To sustain a claim against Jackson, Plaintiff must allege and demonstrate that *Jackson* took **[*5]** some action that violated his rights. *See, e.g.*, Ashcroft v. Iqbal, 556 U.S. 662, 677, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) ("each government official. . .is only liable for his or her misconduct"). Vague allegations of "collective wrongdoing" do not suffice. *See, e.g.*, Thomas v. Grayson County, Kentucky, 2022 U.S. Dist. LEXIS 214465, 2022 WL 17327308 at *4 (W.D. Ky., Nov. 29, 2022) ("[t]o avoid dismissal of a claim, a plaintiff must allege, with particularity, facts that demonstrate what *each* defendant did to violate the asserted constitutional right") (citations omitted); Baytops v. Slominski, 2023 U.S. Dist. LEXIS 134115, 2023 WL 5822760 at *3 (E.D. Mich., June 30, 2023) ("[section] 1983 plaintiffs may not lump all defendants together in each claim and provide no factual basis to distinguish their conduct"); Collins v. Godbee, 2019 U.S. Dist. LEXIS 156601, 2019 WL 4393550 at *3 (E.D. Mich., Sept. 13, 2019) (same). Despite having had the opportunity to conduct discovery, Plaintiff has failed to present or identify any evidence that Defendant Jackson was involved in the conduct giving rise to his claims. Accordingly, the undersigned recommends that Defendant Jackson's motion for summary judgment be granted.

II. Defendant Adamson

With respect to Defendant Adamson, the only specific allegation Plaintiff advances is that, after submitting his request for a halal diet, Adamson "interviewed [Plaintiff], administered a 'faith test' and submitted his recommendation [to] Defendant Leach." (ECF No. 1 at PageID.4). Plaintiff does not allege whether Adamson recommended that his request be **[*6]** granted or denied, however.

In support of his motion for summary judgment, Defendant Adamson has presented evidence establishing that (1) he was not authorized to approve or deny Plaintiff's request but instead could only make a recommendation regarding such, and (2) that he recommended to Defendant Leach that Plaintiff's request for a special religious diet accommodation be *granted*. (ECF No. 33 at PageID.191-201). Plaintiff has presented no evidence to the contrary. Plaintiff instead argues that Defendant Adamson denied or impeded other requests he made for religious diet accommodations. (ECF No. 53). But Plaintiff has not asserted in his complaint any claims related to these alleged subsequent events. The only claims properly before the Court relate to Plaintiff's August 2017 request for a religious diet accommodation. With respect to these events, Defendant Adamson is entitled to summary judgment because Plaintiff has presented no evidence that Adamson did anything to deny or impede his request for accommodation. Accordingly, the undersigned recommends that Defendant Adamson's motion for summary judgment be granted.

III. Defendant Leach

Plaintiff alleges that Leach denied his request **[*7]** for religious diet accommodation. Plaintiff alleges that Leach's action violated (1) his *First Amendment* right to freely exercise his religion; (2) the *First Amendment's Establishment Clause*; (3) the Religious Land Use and Institutionalized Persons Act (RLUIPA); and (4) his right to the equal protection of the laws. Defendant Leach does not dispute that he denied Plaintiff's request, but asserts that he did so because Plaintiff was purchasing from the prison commissary certain foods that "conflicted with [Plaintiff's] adamantly professed religious dietary needs." (ECF No. 33 at PageID.176).

A. Plaintiff's Claim

At the outset, it is necessary to clarify the relief Plaintiff is seeking in this court. To accommodate prisoners' religious beliefs, the MDOC "serves a universal religious diet to all prisoners with religious dietary needs." *Ackerman v. Washington, 16 F.4th 170, 176 (6th Cir. 2021)*. These "universal religious meals" are vegan as well as kosher and halal. *Ackerman, 16 F.4th at 176* (recognizing that the MDOC's vegan meals are kosher); *Al-Shimary v. Dirschell, 2023 U.S. Dist. LEXIS 147296, 2023 WL 5385414 at *3 (E.D. Mich., Aug. 22, 2023)* (recognizing that the MDOC's vegan meals are halal).

Pursuant to the Policy Directive in effect during the time period relevant to this action, a prisoner was permitted to receive the MDOC's vegan meal "only with approval of the CFA Special Activities Coordinator." MDOC Policy Directive **[*8]** 05.03.150 ¶ PP (eff. Sept. 15, 2015). During the time period relevant here, Defendant Leach was the Special Activities Coordinator. (ECF No. 33 at PageID.203). If a prisoner believes that the vegan meal option does not meet his religious needs, he can request an "alternative" religious menu, but any such request must be approved by the MDOC Deputy Director. MDOC Policy Directive 05.03.150 ¶ OO (eff. Sept. 15, 2015).

On or about September 25, 2017, Plaintiff submitted a request for a "religious meal" accommodation. (ECF No. 33 at PageID.191-96). Defendants Adamson and Leach interpreted Plaintiff's request as a desire to receive the MDOC's vegan meal. (ECF No. 33 at PageID.174-77, 198-201). Accordingly, Plaintiff's request was ultimately decided by Defendant Leach not the MDOC Deputy Director. In his response to the present motion, Plaintiff indicates that he understood that securing access to the MDOC's vegan menu was a necessary prerequisite to obtaining an "alternative" religious menu which was his ultimate desire. (ECF No. 53 at PageID.297, 315). Thus, Plaintiff did not initiate the present action seeking approval to receive the MDOC's vegan menu. Instead, Plaintiff is seeking an **[*9]** "alternative" religious diet. Specifically, Plaintiff is requesting that the Court enter an order "requiring defendant to approve" his request to receive halal meals, which include meat and dairy products. (ECF No. 33 at PageID.187; ECF No. 53 at PageID.293-94).

B. Free Exercise

As the Supreme Court has observed, "convicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison." *Bell v. Wolfish, 441 U.S. 520, 545, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979)*; *see also, Turner v. Safley, 482 U.S. 78, 84, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987)* ("[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution"). Thus, while "lawful incarceration brings about the necessary

withdrawal or limitation of many privileges and rights," inmates nevertheless retain the *First Amendment* protection to freely exercise their religion. *See O'Lone v. Shabazz, 482 U.S. 342, 348, 107 S. Ct. 2400, 96 L. Ed. 2d 282 (1987)*.

To demonstrate that his right to freely practice his religion has been violated, Plaintiff must establish that: (1) the belief or practice he seeks to protect is religious within his own "scheme of things," (2) his belief is sincerely held, and (3) Defendant's behavior infringes upon his practice or belief. *Kent v. Johnson, 821 F.2d 1220, 1224-25 (6th Cir. 1987)*; *see also, Flagner v. Wilkinson, 241 F.3d 475, 481 (6th Cir. 2001)* (same). Even if Plaintiff makes this showing, such does not end the analysis because the fact that "prison inmates retain **[*10]** certain constitutional rights does not mean that these rights are not subject to restrictions and limitations." *Wolfish, 441 U.S. at 545*; *see also, Arauz v. Bell, 307 Fed. Appx. 923, 928 (6th Cir., Jan. 22, 2009)* (even if a prisoner demonstrates a violation of his *First Amendment* rights, the defendant is entitled to relief if his action is reasonably related to legitimate penological interests).

Operating a prison is a difficult task requiring "expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." *Turner, 482 U.S. at 85*. Accordingly, courts have consistently held that issues involving "the adoption and execution of policies and practices that in [the] judgment [of prison officials] are needed to preserve internal order and discipline and to maintain institutional security" in most circumstances "should be accorded wide-ranging deference." *Flagner v. Wilkinson, 241 F.3d 475, 481 (6th Cir. 2001)* (quoting *Wolfish, 441 U.S. at 547*); *see also, Bazzetta v. McGinnis, 124 F.3d 774, 779 (6th Cir. 1997)* (issues involving prison administration are properly resolved by prison officials, and the solutions at which they arrive should be accorded deference).

When reviewing an inmate's claim of constitutional violation, courts must balance this policy of judicial restraint with the need to protect inmates' constitutional rights. *See Turner, 482 U.S. at 85*. The standard by **[*11]** which this balancing occurs was articulated by the *Turner* Court, which held that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Id. at 89*. This standard represents a "reasonableness test less restrictive than that ordinarily applied to alleged infringements of fundamental constitutional rights." *Flagner, 241 F.3d at 481* (quoting *Shabazz, 482 U.S. at 349*). The *Turner* Court identified four factors that are relevant in determining the reasonableness of a challenged prison regulation:

> 1. there must be a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it;
> 2. whether there are alternative means of exercising the right that remain open to prison inmates;
> 3. the impact that accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally; and
> 4. whether there are ready alternatives available that fully accommodate the prisoner's rights at de minimis cost to valid penological interests.

Turner, 482 U.S. at 89-91.

Failure to satisfy the first factor renders the regulation unconstitutional, without regard to the remaining three factors. **[*12]** If the first factor is satisfied, the remaining three factors are considered and balanced together; however, they are "not necessarily weighed evenly," but instead represent "guidelines" by which the court can assess whether the actions at issue are reasonably related to a legitimate penological interest. It should further be noted that the *Turner* standard is not a "least restrictive alternative" test requiring prison officials "to set up and then shoot down every conceivable alternative method of accommodating the claimant's constitutional complaint." Instead, the issue is simply whether the policy at issue is reasonably related to a legitimate penological interest. *Flagner, 241 F.3d at 484*.

As of the time period relevant in this action, the MDOC offered "a vegan menu to meet the religious dietary needs of prisoners." MDOC Policy Directive 05.03.150 ¶ OO (eff. Sept. 15, 2015). Prisoners were required to obtain approval from the Special Activities Coordinator to access the vegan menu, however. *Id.* at ¶ PP. MDOC policy provided that such approval "shall be granted only if it is necessary to the practice of the prisoner's designated religion, including the prisoner's sincerely held religious beliefs." *Id.* MDOC policy **[*13]** further provided that a prisoner, once approved to "eat meals prepared from the religious menu," shall not possess or consume "food that violates a tenet of his/her designated religion." *Id.* at ¶ SS.

MDOC policy did not, however, require prisoners to

abstain from foods that violate their religious beliefs *prior to* requesting access to the vegan menu. Nonetheless, the MDOC for many years interpreted its policies as incorporating this requirement. Thus, requests for access to the vegan menu or similar accommodation were routinely denied on the ground that the prisoner, prior to making such request, had eaten or possessed food which was contrary to their stated religious beliefs. Moreover, courts routinely concluded that such action did not violate the prisoner's *First Amendment* rights. *See, e.g., Swansbrough v. Martin, 2017 U.S. Dist. LEXIS 2004, 2017 WL 64917 (W.D. Mich., Jan. 6, 2017); Miles v. Michigan Department of Corrections, 2020 U.S. App. LEXIS 26666, 2020 WL 6121438 at *2-3 (6th Cir., Aug 20, 2020)*.

In 2021, however, the Sixth Circuit, in an unpublished decision, rejected this approach. *See Ewing v. Finco*, case no. 20-1012/1022, Order (6th Cir., Jan. 5, 2021). In *Ewing*, the defendants took the same action that is presently being challenged. Specifically, the defendants denied a prisoner's request to receive vegan meals on the ground that the prisoner, prior to making his request, purchased and/or consumed food items inconsistent with his stated religious beliefs. *Id.* at 1-2. **[*14]** The district court granted summary judgment to the defendants. *Id.* at 2. The Sixth Circuit, however, rejected this conclusion, observing that "[t]he cases upon which the defendants and the district court relied. . .involved situations where the prisoner, after receiving approval for religious meals, purchased or possessed food items inconsistent with the prisoner's claimed dietary restrictions and was then removed from the religious meal program." *Id.* at 5. While the viability of the approach employed in this matter has now been called into question, Defendant Leach argues that, even if his actions are now considered improper, such was not clearly established when he denied Plaintiff's request to eat from the vegan menu. As such, Defendant argues that he is entitled to qualified immunity. The undersigned agrees.

The doctrine of qualified immunity recognizes that government officials must be able to carry out their duties without fear of litigation. *See Davis v. Scherer, 468 U.S. 183, 195, 104 S. Ct. 3012, 82 L. Ed. 2d 139 (1984)*. They can do so only if they reasonably can anticipate when their conduct may give rise to liability for damages and if unjustified lawsuits are quickly terminated. *Ibid.* When government officials perform discretionary functions, they **[*15]** are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *See Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982); see also, Behrens v. Pelletier, 516 U.S. 299, 301, 116 S. Ct. 834, 133 L. Ed. 2d 773 (1996)*.

For a right to be clearly established there must exist "binding precedent from the Supreme Court, the Sixth Circuit, the district court itself, or other circuits that is directly on point." *Wenk v. O'Reilly, 783 F.3d 585, 598 (6th Cir. 2015)* (citation omitted). Court decisions examining matters at a "high level of generality" do not constitute clearly established law because such "avoids the crucial question whether the official acted reasonably in the particular circumstances that he or she faced." *Ibid.* (citation omitted). The plaintiff need not locate authority in which "the very action in question has previously been held unlawful," but "in light of pre-existing law the unlawfulness [of the defendant's actions] must be apparent." *Ibid.* (citation omitted). This does not require the plaintiff to identify "a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al- Kidd, 563 U.S. 731, 741, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011)*.

Because Defendant has asserted a viable claim to qualified immunity, the burden shifts to Plaintiff "to **[*16]** demonstrate both that the challenged conduct violated a constitutional or statutory right, and that the right was so clearly established at the time of the conduct 'that every reasonable official would have understood that what he [was] doing violate[d] that right.'" *T.S. v. Doe, 742 F.3d 632, 635 (6th Cir. 2014)* (quoting *al- Kidd, 563 U.S. at 741*).

Plaintiff has failed to identify any authority holding, or even suggesting, that the approach employed by Defendant Leach in this case was considered improper or unlawful as of the date Leach acted. Likewise, the Court has identified no such authority. To the contrary, as recently as 2020, both this Court and the Sixth Circuit continued to approve of the approach employed by Defendant Leach in this matter. *See Miles v. Michigan Department of Corrections, 2020 U.S. App. LEXIS 26666, 2020 WL 6121438 at *2-3 (6th Cir., Aug. 20, 2020); O'Connor v. Leach, 2020 U.S. Dist. LEXIS 79559, 2020 WL 2187814 at *1 (W.D. Mich., May 6, 2020)*. Accordingly, the undersigned recommends that Defendant Leach is entitled to qualified immunity as to Plaintiff's *First Amendment* Free Exercise claim.

C. RLUIPA

RLUIPA prohibits any government from imposing a "substantial burden on the religious exercise" of a prisoner, unless such burden constitutes the least restrictive means of furthering a compelling governmental interest. *42 U.S.C. § 2000cc-1(a)*. RLUIPA does not define the phrase "substantial burden." The Sixth Circuit, however, has concluded that the phrase "has the same meaning under **[*17]** RLUIPA as provided by the Supreme Court in its 'free exercise' decisions." *Mitchell v. Schroeder, 2022 U.S. Dist. LEXIS 16172, 2022 WL 263212 at *4-5 (W.D. Mich., Jan. 28, 2022)* (citations omitted). Accordingly, a burden is substantial "where it forces an individual to choose between the tenets of his religion and foregoing governmental benefits or places substantial pressure on an adherent to modify his behavior and to violate his beliefs." *2022 U.S. Dist. LEXIS 16172, [WL] at *5* (citations omitted). Likewise, a burden is less than "substantial" where it imposes merely an "inconvenience on religious exercise." *Ibid.* (citations omitted). The Court need not decide whether Defendant Leach's actions imposed a substantial burden on Plaintiff's religious exercise because Plaintiff has failed to assert this action against any defendant who can provide the relief he seeks.

Under RLUIPA, Plaintiff can only obtain injunctive relief. *See Mitchell, 2022 U.S. Dist. LEXIS 16172, 2022 WL 263212 at *8-9*. Plaintiff seeks injunctive relief in this case, specifically an order requiring "defendant" to grant his request for an "alternative" religious diet that includes halal meat and dairy products. As noted above, however, none of the defendants in this action possess the authority to approve such a request. Only the MDOC Deputy Director possesses the authority to approve the specific accommodation **[*18]** Plaintiff requests. Because Plaintiff has failed to assert this action against a defendant with the authority to grant the specific relief he requests, Defendant Leach is entitled to relief. *See, e.g., Hall v. Trump, 2020 U.S. Dist. LEXIS 38349, 2020 WL 1061885 at *3-5 (M.D. Tenn., Mar. 5, 2020)* (to obtain injunctive relief, a plaintiff must bring an action against an individual "who ha[s] the power to provide the relief sought"); *Walker v. Scott, 2015 U.S. Dist. LEXIS 122467, 2015 WL 5450497 at *4 (C.D. Ill., Sept. 15, 2015)* ("[a]s injunctive relief is the sole remedy available to a plaintiff under RLUIPA, the proper defendants are those with the responsibility to ensure that such relief is carried out"); *Wolf v. Tewalt, 2021 U.S. Dist. LEXIS 53471, 2021 WL 1093089 at *5 (D. Idaho, Mar. 22, 2021)* (prisoner's RLUIPA claims dismissed as to defendants lacking the authority to grant the injunctive relief requested). Accordingly, the undersigned recommends that Defendant Leach is entitled to summary judgment on Plaintiff's RLUIPA claim.

D. *Establishment Clause*

The *Establishment Clause of the First Amendment* prohibits "the enactment of any law 'respecting an establishment of religion.'" *Maye v. Klee, 915 F.3d 1076, 1084 (6th Cir. 2019)*. Thus, "one religious denomination cannot be officially preferred over another." *Ibid.* (citation omitted). An official violates the *Establishment Clause* when he "confers a privileged status on any particular religious sect or singles out a bona fide faith for disadvantageous treatment." *Ibid.* While Plaintiff has presented evidence that Defendant Leach took action **[*19]** that arguably "disadvantaged" him personally, Plaintiff has failed to demonstrate that Defendant Leach took action that preferred or disadvantaged one religious denomination over another, a failure that is fatal to his claim. *See, e.g., Rains v. Wash., 2020 U.S. Dist. LEXIS 63179, 2020 WL 1815839 at (W.D. Mich., Apr. 10, 2020)*. Accordingly, the undersigned recommends that Defendant Leach is entitled to summary judgment on Plaintiff's *Establishment Clause* claim.

E. Equal Protection

The *Equal Protection Clause of the Fourteenth Amendment to the United States Constitution* provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. To state an equal protection claim, a plaintiff "must adequately plead that the government treated the plaintiff disparately as compared to similarly situated persons and that such disparate treatment either burdens a fundamental right, targets a suspect class, or has no rational basis." *Center for Bio-Ethical Reform, Inc. v. Napolitano, 648 F.3d 365, 379 (6th Cir. 2011)*. The Supreme Court has also recognized what is referred to as a "class-of-one" equal protection claims in which the plaintiff does not allege membership in a particular class or group, but instead alleges that he "has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Davis v. Prison Health Services, 679 F.3d 433, 441 (6th Cir. 2012)*.

Plaintiff's Equal Protection claim fails because he has failed **[*20]** to demonstrate that he has been treated differently from other similarly situated prisoners. Specifically, Plaintiff has not presented evidence that other prisoners' requests for religious meal accommodation were granted by Defendant Leach

despite having purchased or possessed foods which violated their stated religious requirements. *See Rains, 2020 U.S. Dist. LEXIS 63179, 2020 WL 1815839 at *13-14* (an equal protection claim fails absent evidence that the plaintiff was treated differently to others who are similarly situated "in all relevant respects"). Accordingly, the undersigned recommends that as to Plaintiff's Equal Protection Claim, Defendant Leach is entitled to summary judgment.

CONCLUSION

For the reasons articulated herein, the undersigned recommends that Defendants' Motion for Summary Judgment (ECF No. 32) be granted and this action terminated.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen days of the date of service of this notice. *28 U.S.C. § 636(b)(1)(C)*. Failure to file objections within the specified time waives the right to appeal the District Court s order. *See Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985)*; *United States v. Walters, 638 F.2d 947 (6th Cir.1981)*.

Respectfully submitted,

/s/ Phillip J. Green

PHILLIP J. GREEN

United States Magistrate Judge

Date: December 12, 2023

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